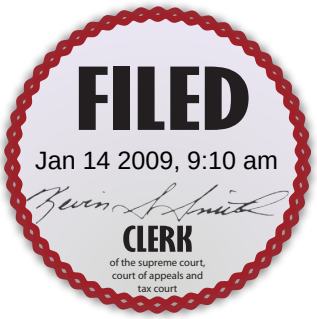

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IN THE
COURT OF APPEALS OF INDIANA

PRESTON TAYLOR,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 87A01-0810-CR-465
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WARRICK SUPERIOR COURT
The Honorable Keith A. Meier, Judge
Cause No. 87D01-0712-MR-255

January 14, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Preston Taylor appeals his sentence following a plea of guilty to murder[1] and feticide, a class C felony.[2]

We affirm.

ISSUE

Whether the trial court erred in sentencing Taylor.

FACTS

On December 14, 2007, Stanley Offil returned to his Warrick County home after being out of town and discovered the body of his fiancée, Brooke Balbach, on the floor of their bedroom.[3] She was naked and there appeared to be a boot print on her chest and a stab wound to her neck. Offil immediately telephoned 911.

A neighbor informed police that she had seen a silver truck with maroon stripes parked in the driveway of the Offil-Balbach residence the night before. Officers observed a "black greasy substance" on Balbach's chest. (App. 18).

The following morning, Bob Graham telephoned the police. He informed them that Taylor had come to his home at approximately 8:00 a.m. and "confessed to him that morning that he killed a pregnant woman" by choking her. (App. 19). According to

[1] Ind. Code § 35-42-1-1.

[2] I.C. § 35-42-1-6.

[3] The statement of facts is derived from the probable cause affidavit.

Graham, Taylor had been driving a gray pickup truck with maroon stripes and was wearing "his dirty mechanic work clothes." (App. 22-23).

An autopsy revealed the cause of Balbach's death to be strangulation and that she had been pregnant at the time of her death. In the afternoon of December 15, 2007, Taylor turned himself in to police at the Spencer County Sheriff's Department.

On December 17, 2007, the State charged Taylor with Count 1, murder; and Count 2, feticide. On February 15, 2008, the State filed an amended information, charging Taylor with Count 3, rape as a class A felony; Count 4, criminal deviate conduct as a class A felony; and Count 5, sexual battery as a class C felony. Subsequently, the State filed a motion to dismiss Counts 3 through 5 due to insufficient evidence, which the trial court granted.

On June 3, 2008, the State and Taylor entered into an agreement, whereby Taylor agreed to plead guilty to Counts 1 and 2. The parties agreed that sentencing would be "in the discretion of the Court with both parties free to present evidence and argument in support of such sentence as they believe to be appropriate." (App. 271). The trial court entered a plea of guilty on Taylor's behalf; ordered a pre-sentence investigation report ("PSI"); and set the matter for sentencing.

The trial court held a sentencing hearing on July 2, 2008. The trial court found, in relevant part, as follows:

> I also considered the fact that the Defendant pled guilty. He knew he had a right to a trial in the case. By pleading guilty, he did save the taxpayers money and judicial resources by not going to trial. I think it also indicates a

> willingness to come forth and admit that he did do something wrong and he's willing to accept the consequences, knowing that there will be some serious consequences to the guilty plea, and it also avoids the families on both sides from having to re-live that horrible night and event that had occurred through a week or two of trial. So I did give that some consideration. . . . I don't attribute the guilty plea—I don't give it as much significance as the Defendant would give to it, although it does have some significance. The fact that the Defendant turned himself in, and I go back to the Defendant knew about C-S-I. And so, yeah, you turn yourself in because you know they're going to get you. So I don't give that really any weight. . . . [T]he only factor that I'm willing to give some weight to would be the fact that he did plead guilty in this case.

(Tr. 150-51). The trial court then sentenced Taylor to consecutive sentences of sixty-two years on Count 1 and four years on Count 2.

DECISION

Taylor asserts that the trial court erred in sentencing him. Specifically, he argues that the trial court failed to give sufficient mitigating weight, if any, to his plea of guilty. He also extends an argument, which we construe to be that his sentence is inappropriate.

1. Guilty Plea

Taylor contends that the trial court abused its discretion in "giving little or no weight" to his guilty plea. Taylor's Br. at 9. A sentence that is within the statutory range is subject to review only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). One way in which a trial court may abuse its discretion is if the sentencing statement "omits reasons for imposing a sentence that are clearly supported by the record and advanced for consideration . . . ." *Id.* at 490-91. A trial court, however, "no longer has any obligation

to 'weigh' aggravating and mitigating factors against each other when imposing a sentence," and therefore, "can not now be said to have abused its discretion in failing to 'properly weigh' such factors." *Id.* at 491.

It is clear from the sentencing statement that the trial court found Taylor's guilty plea to be a mitigating circumstance and gave it "some weight . . . ." (Tr. 151). As to the weight assigned to the mitigating circumstance, it is not subject to review for abuse of discretion. *See Anglemyer*, 868 N.E.2d at 490. Thus, we find no abuse of discretion.

2. Inappropriate Sentence

Taylor also seems to assert that his sentence for murder is inappropriate because his criminal history is not extensive and the crime was not premeditated. We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). It is the defendant's burden to "'persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.'" *Anglemyer*, 868 N.E.2d at 494 (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

In determining whether a sentence is inappropriate, the advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." *Childress*, 848 N.E.2d at 1081. The advisory sentence for murder is fifty-five years. I.C. § 35-50-2-3.[4] The potential maximum sentence is sixty-five years. *Id.*

[4] Indiana's new advisory sentencing scheme, which went into effect on April 25, 2005, applies in this case. Pursuant to Indiana Code section 35-50-2-3, "[a] person who commits murder shall be imprisoned

Here, the trial court sentenced Taylor to sixty-two years. Accordingly, Taylor received three years less than the maximum sentence. He received the advisory sentence of four years on the feticide conviction. *See* I.C. § 35-50-2-6.

Regarding the nature of his offense, the record shows that Taylor and Offil were good friends and that Taylor knew Balbach. One night, he went to their home and inexplicably strangled the pregnant Balbach, resulting in the death of both her and her fetus.

Regarding his character, it is true that Taylor's criminal history is not the worst, consisting of three alcohol-related convictions. Despite these prior convictions, he nonetheless continued to abuse alcohol and purportedly committed the current offense while under the influence of alcohol. We recognize that Taylor suffers from an addiction. We also recognize that he took responsibility for his actions by pleading guilty. Nevertheless, the nature of his offense weighs heavily against Taylor, and our review of the record does not convince us that his sentence is inappropriate.

Affirmed.

RILEY, J., and VAIDIK, J., concur.

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for a fixed term of between forty-five (45) and sixty-five (65) years, with the advisory sentence being fifty-five years."